

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



**75-60839**

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

*BAB*

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JAMES P. LEE, JR.,  
Plaintiff-Appellant

v.

WILLIAM L. THORNTON, ETC., ET AL.,  
Defendants-Appellees

---

RONALD RICH,  
Plaintiff-Appellant

v.

WILLIAM L. THORNTON, ETC., ET AL.,  
Defendants-Appellees

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On Appeal from the United States District Court  
for the District of Vermont

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APPENDIX OF RONALD RICH

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JOHN A. DOOLEY, III  
Vermont Legal Aid, Inc.  
150 Cherry Street  
P.O. Box 562  
Burlington, Vermont 05401

Counsel for Plaintiff-  
Appellant

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This appendix contains only those documents that are relevant solely to Rich v. Thornton et al., Civil No. 6762. Documents that apply to both the Rich & Lee cases are contained in the Lee Appendix. The following documents are applicable to both cases: Opinion and Order, Judgment Order of January 22, 1974; Notice of Appeal to United States Supreme Court; Opinion and Order, Judgment Order of the United States Supreme Court; Order Dissolving 3-Judge Court; Opinion and Order of July 25, 1975; Notice of Appeal.

UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF VERMONT

RONALD RICH, )  
Plaintiff )  
vs. )  
WILLIAM L. THORNTON, ) CIVIL ACTION NO. 6762  
District Director of )  
Customs )  
VERNON D. ACREE, )  
Commissioner of Customs )  
GEORGE P. SCHULTZ, )  
Secretary of Treasury, )  
Defendants )

COMPLAINT

STATEMENT OF JURISDICTION

1. Jurisdiction of this claim is based on 28 U.S.C.  
§ 1361, 28 U.S.C. § 1335, 28 U.S.C. § 1336 and 28 U.S.C. § 2201.

STATEMENT OF PARTIES

2. Plaintiff is a citizen of the State of Vermont  
residing in St. Albans, Vermont.

3. Defendant Thornton is the District Director of  
Customs for the geographical area where the search and seizure,  
below described, took place. He is charged with the enforcement  
and administration of the customs laws in his area and pursuant  
to authority granted by Defendant Connelly and Defendant Ambrose

4. Defendant Acree is the Commissioner of Customs to  
whom petitions pursuant to 19 U.S.C. § 1618 are submitted, and  
who has the right to levy fines and who also controls the  
activities of the District Customs Director.

5. Defendant Schultz is the Secretary of Treasury - the Bureau of Customs is a branch of the Department of Treasury and he is charged with the enforcement of all laws pertaining to Customs.

STATEMENT OF CLAIM

6. On or about October 27, 1971 Plaintiff, his wife, their two minor children, and Plaintiff's automobile, to wit: one 1964 Ford automobile, were detained and searched in the vicinity of Swanton, Vermont, incident to an alleged border crossing by Plaintiff and his family with the vehicle from Canada to the United States.

7. On or about October 27, 1971 an unknown federal employee at the Border Station at Highgate Springs, Vermont, did seize Plaintiff's automobile for an alleged violation of 19 U.S.C. § 1459: which

Requires the person in charge of a vehicle arriving in the United States from contiguous countries to immediately report his arrival to the customs office at the port of entry or customhouse which shall be nearest to the place at which said vehicle shall cross the boundary line.

8. On or about October 27, 1971, an unknown federal employee at the Boarder Station at Highgate Springs, Vermont, did direct Plaintiff to complete and submit a petition for remission and mitigation pursuant to 19 U.S.C. § 1618 which states:

That any person who has had a vehicle seized or who has incurred a penalty incident to a violation or an alleged violation of 19 U.S.C. §§ 1459, 1460 may submit a petition for remission and/or mitigation of said seizure or penalty to the Defendants for their determination.

9. On or about October 27, 1971, at the Port of Entry at Highgate Springs, Vermont, an unknown federal employee did assess Plaintiff's automobile to be worth Fifty (\$50.00) dollars and informed Plaintiff that the payment of the Fifty (\$50.00) dollars would release the automobile to the Plaintiff.

10. On or about October 27, 1971 at the Port of Entry at Highgate Springs, Vermont, Plaintiff did reclaim his automobile and was told by said employee that Plaintiff would be further informed of the disposition of his case by Defendant Thornton.

11. On or about January 17, 1972, Plaintiff was notified by mail that on January 5, 1972 Defendant Thornton had imposed a penalty in the amount of \$1600.00 for an alleged violation of 19 U.S.C. § 1459.

12. On or about January 17, 1972 Defendant Thornton notified Plaintiff by mail that in consideration of Plaintiff's petition for relief from penalties incurred by Plaintiff for violation of 19 U.S.C. § 1459 the penalty of \$1600.00 was mitigated to Twenty-five dollars (\$25.00). This penalty would be deducted from the Fifty Dollars (\$50.00) "deposit."

13. Plaintiff has not been afforded any type of hearing concerning the validity of the search, validity of the seizure, validity of the alleged violations of the law and validity or amount of the penalty assessed.

14. The said penalty assessed against Plaintiff is in the nature of a criminal penalty.

15. The mitigated seizure and subsequent holding of Plaintiff's "deposit" without a hearing for probable cause for the seizure prior to or immediately after said seizure

violated Plaintiff's right to such a hearing guaranteed by the Fourth Amendment to the United States Constitution.

16. The mitigated seizure and subsequent holding of Plaintiff's "deposit" without a hearing prior to or immediately after said mitigated seizure violated Plaintiff's right not to be deprived of property without due process of law in violation of the Fifth Amendment to the United States Constitution.

17. The imposition of the penalty and subsequent mitigation of the penalty by Defendant Thornton and his employees to a Twenty-five dollars (\$25.00) penalty deprived Plaintiff of his property without due process of law in violation of Plaintiff's rights guaranteed by the Fifth Amendment to the United States Constitution.

18. The assessment of a criminal penalty by Defendant Thornton violated Plaintiff's:

- a. right to enjoy a speedy and public trial,
- b. right to trial by jury,
- c. right to be informed of the nature and cause of the accusation,
- d. right to be confronted with the witnesses against him, and
- e. right to the assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution.

19. Defendant's action set forth in Paragraphs 6,7,8, 9,10,11,12, supra, are therefore unconstitutional and void.

WHEREFORE PLAINTIFF PRAYS THAT:

20. This Court issue its writ in the nature of mandamus ordering Defendants to restore to Plaintiff the Twenty-Five dollars (\$25.00) penalty assessed against and paid by him.

21. This Court award to Plaintiff the amount of Two Thousand Dollars (\$2,000.00) to compensate him for damages incurred by Defendants' actions.

22. This Court issue its declaratory judgment holding that the provisions of 19 U.S.C. § 1460 which provides for seizures and forfeitures without affording constitutional safeguards to be unconstitutional and without force or effect, and enjoining the further enforcement of said statutory judgment.

23. This Court issue its declaratory judgment holding that the provisions of 19 U.S.C. § 1618 which allow Defendant Acree, Defendant Schultz or Defendant Thornton to assess forfeitures and penalties without affording constitutional safeguards to be unconstitutional and without force or effect, and enjoining the further enforcement of said statute provision.

REQUEST FOR THREE-JUDGE DISTRICT COURT

24. Plaintiff further requests the convocation of Three Judge District Court pursuant to 28 U.S.C. § 2202, inasmuch as this suit seeks to enjoin the operation of a United States Statute on grounds that said statute is unconstitutional.

Dated at St. Albans, in the County of Franklin and State of Vermont, this 19th day of October, 1972.

RONALD RICH

s/ James R. Flett

James R. Flett

Vermont Legal Aid, Inc.

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

DISTRICT OF VERMONT

RONALD RICH, )  
Plaintiff )  
vs. ) CIVIL ACTION NO. 6762  
WILLIAM L. THORNTON, ET AL., )  
Defendants )

MOTION TO DISMISS

Now come the defendants, by and through their attorney, George W. F. Cook, United States Attorney for the District of Vermont, and respectfully move this Honorable Court to dismiss this action and for cause state the following:

1. The Complaint fails to state a claim upon which relief may be granted.
2. This Court lacks jurisdiction over the subject matter of this action.
3. Jurisdiction does not lie under 28 U.S.C. 1361, as plaintiff has not exhausted his administrative remedy.
4. Jurisdiction does not lie under 28 U.S.C. 2201, as that section does not of itself confer jurisdiction in this Court.
5. The request for a three-judge court should be denied, as the constitutional issue presented is not a substantial one and may properly be decided by a single district court judge.
6. The decision of the Secretary of the Treasury or his authorized delegate is not subject to review.

Dated at Rutland, in the District of Vermont, this 2d  
day of January, 1973.

GEORGE W. F. COOK  
United States Attorney  
Attorney for Defendants

By s/ William B. Gray  
WILLIAM B. GRAY  
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I hereby certify this 2d day of January, 1973, that I served the foregoing MOTION TO DISMISS upon the plaintiff herein, by mailing a copy of same to his attorney, James R. Flett, Esq., Vermont Legal Aid, Inc., 54 Lake Street, St. Albans, Vermont 05478.

s/ William B. Gray  
WILLIAM B. GRAY  
Assistant U. S. Attorney

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

RONALD RICH, )  
Plaintiff )  
vs. ) Civil No. 6762  
WILLIAM L. THORNTON, )  
District Director of )  
Customs, et al., )  
Defendants )

DEFENDANTS' MOTION  
FOR A SUMMARY JUDGMENT

Now come the defendants, by and through their attorney,  
George W. F. Cook, United States Attorney for the District of  
Vermont, and respectfully move this Honorable Court to enter a  
summary judgment in their favor and for cause state that:

There exists no dispute as to any material  
fact and defendants are entitled to judgment  
as a matter of law.

WHEREFORE, defendants respectfully pray this Honorable  
Court grant their motion for a summary judgment.

Dated at Rutland, in the District of Vermont, this 23rd  
day of February, 1973.

GEORGE W. F. COOK  
United States Attorney

By s/ William B. Gray  
WILLIAM B. GRAY  
Assistant U. S. Attorney

CERTIFICATE OF SERVICE

I hereby certify this 23d day of February, 1973 that  
I served the foregoing DEFENDANTS' MOTION FOR A SUMMARY JUDGMENT

upon the plaintiff, by mailing a copy of same with postage pre-paid, to his attorney, J. Morris Clark, Esq., Vermont Legal Aid, Inc., P.O. Box 562, Burlington, Vermont 05401.

s/ William B. Gray  
WILLIAM B. GRAY  
Assistant U. S. Attorney

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

RONALD RICH, )  
Plaintiff )  
vs. ) CIVIL ACTION NO. 6762  
WILLIAM L. THORNTON, ET AL., )  
Defendants )

MOTION TO AMEND COMPLAINT AND TO ADD  
ADDITIONAL PARTY DEFENDANT

Now comes the above-named plaintiff, Ronald Rich, by his attorneys, Vermont Legal Aid, Inc., and move the honorable court for leave to amend Paragraph 1 of his complaint, pursuant to Rule 15(a), F.R. Civ. P., to read as follows:

"1. Jurisdiction of this claim is based on 28 U.S.C. §§ 1337, 1346, 1355, 1356, 1361, and 2201."

Plaintiff further moves this honorable court pursuant to Rule 20(a) F.R. Civ. P. to add the United States of America as an additional party defendant.

Dated at Burlington, Vermont this 1st day of March, 1973.

RONALD RICH

By s/ J. Morris Clark  
J. Morris Clark, Esq.  
Vermont Legal Aid, Inc.  
192 Bank Street - Box 562  
Burlington, Vermont

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of MOTION TO AMEND COMPLAINT AND TO ADD ADDITIONAL PARTY DEFENDANT upon William L. Thornton, Vernon D. Acree and George P. Schultz,

Defendants in this action, by mailing a copy thereof, postage prepaid, on March 1, 1973, to their attorney, William Gray, Esq., Assistant United States Attorney, whose office is at the Federal Building, Rutland, Vermont.

s/ J. Morris Clark

J. MORRIS CLARK, ESQ.

Vermont Legal Aid, Inc.

192 Bank Street - Box 562

Burlington, Vermont

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

RONALD RICH, )  
Plaintiff )  
vs. ) CIVIL ACTION NO. 6762  
WILLIAM L. THORNTON, ET AL., )  
Defendants )

MOTION FOR SUMMARY JUDGMENT

Now comes the Plaintiff, Ronald Rich, by and through his attorneys James R. Flett, Esq. and Vermont Legal Aid, Inc. and pursuant to Rule 56 of the Federal Rules of Civil Procedure moves the Honorable Court to grant summary judgment on Plaintiff's claims.

Dated at St. Albans, Vermont, this 5th day of March, 1973.

RONALD RICH

By: s/ James R. Flett  
James R. Flett, Esq.  
Vermont Legal Aid, Inc.  
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of Motion for Summary Judgment upon William L. Thornton, Vernon D. Acree and George P. Schultz, Defendants in this action, by mailing a copy thereof, postage prepaid, on March 5, 1973, to their attorney, William Gray, Esq., Assistant United States Attorney,

whose office is at the Federal Building, Rutland, Vermont.

s/ James R. Flett  
James R. Flett, Esq.  
Vermont Legal Aid, Inc.  
St. Albans, Vermont  
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
DISTRICT OF VERMONT

RONALD RICH, )  
Plaintiff )  
vs. ) Civil No. 6762  
WILLIAM L. THORNTON, ET AL., )  
Defendants )

AMENDED STIPULATION

It is hereby stipulated and agreed between the parties in the above-captioned case, by their respective attorneys, that if the following witnesses were called they would testify as indicated. To the extent that there may be inconsistencies between plaintiff's testimony on the one hand and that of representatives of the Government on the other, neither party concedes the issue of veracity. This Amended Stipulation replaces the Stipulation dated February 28, 1973, previously filed with This Court.

I. PROCEEDINGS AGAINST RONALD RICH

Stipulation of Facts

Plaintiff Ronald Rich, if called, would testify as follows:

1. He is and has been at all times pertinent to this suit a resident of St. Albans, Vermont, and is a citizen of the United States.

2. On October 27, 1971, plaintiff, his wife and two minor children crossed the border from Canada into the United States via the Wolfridge Road in the Township of Alburg, Vermont.

3. In the vicinity of Swanton, Vermont, plaintiff and his family were stopped by Border Patrol agents and were accused of having crossed the border illegally. They were then ordered to proceed to the border station at Highgate Springs, Vermont, which they did.

4. At the Highgate Springs customs and immigration station a special agent of the Customs Department seized plaintiff's 1964 Ford Automobile for violation of 19 U.S.C. § 1459. The Special Agent was Paul Graveline.

5. Immediately thereafter, while still at the immigration and customs station, plaintiff was advised by Customs Inspector John Clark of the nature of the charges against him, of the fact that he was subject to a statutory penalty under 19 U.S.C. § 1460 of \$100.00 for himself and \$500.00 for each of his three passengers, and that he could file immediately a petition for remission and mitigation of penalties under 19 U.S.C. § 1608. Customs Inspector Clark has been delegated authority by defendant WILLIAM THORNTON to entertain certain customs mitigation and remission cases, such as Rich's.

6. Plaintiff filed a mitigation and remission petition while still at the customs and immigration station with Customs Inspector Clark. A copy of said petition is attached hereto, labelled as Exhibit A, and is incorporated into this Amended Stipulation as evidence in this case. Customs Inspector Clark immediately acted upon the petition to the extent of determining that if a deposit of \$50.00 were made toward the ultimate mitigated penalty, he would no longer need

to hold the car, as authorized by 19 U.S.C. § 1594, and could release it to Rich pursuant to 19 U.S.C. § 1614. Rich made the \$50.00 deposit at that time and the car was released to him.

7. On or about January 6, 1972, plaintiff received a Notice of Penalty Incurred and Demand for Payment (Form 5955A), dated January 5, 1972 and signed by defendant THORNTON. A copy of said Notice is attached hereto as Exhibit B. Said Notice includes advice as to the right to and procedures for filing a petition for administrative relief.

8. No additional petition was filed, and by letter dated January 14, 1972, defendant WILLIAM THORNTON notified plaintiff that the penalty had been mitigated to \$25.00 in view of the fact that there was no evidence of record of an attempt to import any dutiable merchandise in the automobile at the time it was seized, but that plaintiff, nevertheless, had intentionally failed to report to the border station. The sum of \$25.00 would be deducted from the \$50.00 deposit and the remainder returned in due course. A copy of the said letter is attached hereto, labelled Exhibit C, and is incorporated herein as evidence.

9. Except to the extent that he discussed his case with Inspector Clark, plaintiff was not afforded a hearing with regard to whether or not his failure to report was intentional or violated the statute, nor as to the amount of deposit he should make, nor as to the merits of his petition for complete remission of the penalty.

II. BACKGROUND INFORMATION

To the extent that this Court may deem it relevant,  
the portion of the Amended Stipulation filed in Lee v.  
Thornton, Civil Action No. 6461, entitled BACKGROUND INFORMATION,  
is incorporated herein by reference.

Dated at Rutland, in the District of Vermont, this 7th  
day of March, 1973.

s/ J. Morris Clark  
J. MORRIS CLARK, Esq.  
Vermont Legal Aid, Inc.  
Attorney for Plaintiff

s/ William B. Gray  
WILLIAM B. GRAY, Esq.  
Assistant United States Attorney  
Attorney for Defendant

PETITION FOR REMISSION OR MITIGATION OF FORFEITURES  
AND PENALTIES INCURRED

DISTRICT	PORT	SEIZURE NO.
Vermont	Highgate Springs	72-0210-10177
DESCRIPTION OF MERCHANDISE		
FORD STATION WAGON		

NAME	ADDRESS	
Ronald M Rich	1685 W MAIN ST STALBINS	
I petition for the release and delivery of the seized above-described merchandise and for relief from the personal penalty incurred because of the following mitigating circumstances.  I went shopping with the price were too high so we did not buy anything in Canada. We were coming back and we got mixed up on our roads and ended up in U.S. before we realized we didn't go through the customs. And then we got stopped.		
SIGNATURE	ADDRESS	DATE
<u>Ronald M Rich</u>	<u>As Above</u>	

DEPARTMENT OF THE TREASURY  
BUREAU OF CUSTOMS  
2311, 2315 C.M.

NOTICE OF PENALTY OR LIQUIDATED DAMAGES INCURRED  
AND DEMAND FOR PAYMENT

File Number <b>72-0210-10177</b>
Date and Code <b>Highgate Springs, 10</b>
Date <b>January 5, 1972</b>
Investigation File No. <b>RP11R0021700</b>

TO

Mr. Ronald Rich  
168½ North Main Street  
St. Albans, Vermont 05478

DEMAND IS HEREBY MADE FOR PAYMENT OF \$ 1600.00, representing  Penalties or  Liquidated Damages assessed against you for violation of law or regulation, or breach of bond, as set forth below:

On October 27, 1971 you entered the United States accompanied by your wife and two children via the Wolfridge Road, Township of Alburg, Vermont. You failed to report for inspection and were apprehended by Border Patrol Agent Spoffard, and taken to the Port of Highgate Springs, Vermont.

(continue facts on reverse)

LAW OR REGULATION VIOLATED	BOND BREACHED
Sec 459, T.A. 1930	
DESCRIPTION OF BOND (if any)	Form Number
Name and Address of Principal in Bond	Amount \$
Name and Address of Surety on Bond	Date
Surety Identification No.	

If you feel there are extenuating circumstances, you have the right to petition for administrative relief. Such petition must be executed in (duplicate) triplicate, addressed to the Commissioner of Customs, and must be forwarded to the District Director of Customs at \_\_\_\_\_  
**Port Director-Customs (Highgate Springs, Vt.) RD #2, Swanton, Vermont 05488**

Unless the amount herein demanded is paid or a petition for relief is filed with the District Director of Customs within 60 days from the date hereof, further action will be taken in connection with your bond or the matter will be referred to the United States Attorney.

DISTRICT DIRECTOR OF CUSTOMS

BY:

*[Signature]*

W. L. Thornton

January 14, 1972  
Case No.  
72-0210-10177

Mr. Ronald Rich  
168 1/2 North Main Street  
St. Albans, Vermont 05478

Dear Mr. Rich:

This refers to your petition for relief from penalties incurred by you for failure to report to Customs on your entry into the United States on the so-called Wolfridge Road in the town of Alburg, Vermont October 27, 1971.

You claim the violation was due to the fact you were unfamiliar with the roads in that area.

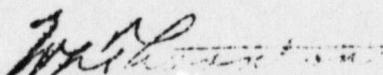
The Border Patrol officer's report of the incident indicates you did not follow the road signs directing you to the port of entry. We, therefore, have to consider your non-compliance with the reporting requirements as intentional.

However, since there is no evidence of record you were attempting at the time to pass merchandise through Customs without paying the lawful duties thereon and since there is no record here of a prior violation by you of any Customs law, we feel relief may be granted.

Accordingly, the penalty is hereby mitigated to \$25.

This amount will be deducted from your \$50 deposit made at Highgate Springs October 27, and the remainder returned to you by the Regional Commissioner of Customs, Boston, Massachusetts in due course. The case then will be considered closed in our records.

Sincerely yours,



W. L. Thornton  
District Director

cc: James R. Flett,  
Attorney at Law

In reference to your letter dated January 10, 1972, file 7-206-57